

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MELANIE RAEI,

Plaintiff,

vs.

Civ. No. 97-1096 JC/WWD

LEO MARQUEZ, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

This matter comes before the Court upon Plaintiff's Motion to Compel [docket no. 39] which was served by mail on Defendant on April 15, 1998. Plaintiff seeks to compel full and complete answers to interrogatories propounded to Santa Fe County Sheriff Benjie Montano. Although it is not clear exactly when the answers to the interrogatories were served on Plaintiff, Plaintiff's counsel acknowledged receipt of the answers in a letter dated March 16, 1998.

D.N.M.LR-CIV. 26.6 requires the service of a motion to compel within twenty (20) calendar days of service of an objection. Failure to proceed within this time period constitutes acceptance of the objection.

"Answers to Plaintiff's Interrogatories to Defendant Benjie Montano, Santa Fe County Sheriff's Department" were not signed by Benjie Montano under oath as required by Fed. R. Civ. P. 33(b). Under Fed. R. Civ. P. 33(b)(2), "[t]he answers are to be signed by the person making them, and the objections signed by the attorney making them." (Emphasis supplied.) Only Counsel for Defendant, Judith C. Herrera, Esq., signed the aforementioned "Answers" which are

interspersed with the objections. Since the “Answers” are an incomplete pleading, I decline to reward the Defendant by ruling that the motion to compel is untimely under D.N.M.LR-Civ. 26.6. Instead, I direct Defendant Benjie Montano to serve upon Plaintiff his sworn answers together with any objection to Plaintiff’s interrogatories. Such service shall be made on or before May 25, 1998, and Defendant shall also serve a copy of the answers on the undersigned. Plaintiff shall serve any motion to compel within twenty (20) days of the service of the aforementioned answers. Defendant Benjie Montano shall serve his response to the motion to compel, and Plaintiff shall serve any reply and file the motion package in accordance with the applicable rules.

IT IS SO ORDERED.


UNITED STATES MAGISTRATE JUDGE